



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2004

Ms. Rachael Maresh Finley
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2004-6471

Dear Ms. Finley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207039.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for records pertaining to seven named district employees. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

You assert that Exhibit E is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." This office interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that

¹ We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

opinion, this office also determined that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of the evaluation. *Id.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is serving as an administrator at the time of the evaluation. *Id.*

Upon review of the information, we agree that portions of Exhibit E constitute evaluations under section 21.355 of the Education Code. Thus, provided the employees at issue were required to hold and did hold the appropriate certificates and were acting as teachers or administrators at the time of the submitted evaluations, we find the district must withhold the information we have marked in Exhibit E under section 552.101 in conjunction with section 21.355 of the Education Code. The remainder of Exhibit E, however, does not consist of the type of records made confidential by section 21.355. We therefore determine that the district may not withhold any of the remaining submitted information in Exhibit E under section 552.101 in conjunction with section 21.355 of the Education Code.

You assert that portions of Exhibit C are excepted from disclosure under section 552.102 of the Government Code, which protects most information on a transcript from an institution of higher education maintained in the personnel file of a professional public school employee. Gov't Code §552.102(b). Section 552.102(b) excepts from disclosure all information from transcripts other than the employee's name, the courses taken, and the degree obtained. Open Records Decision No. 526 (1989). Accordingly, the district must withhold the college transcripts in Exhibit C, except for information in these transcripts pertaining to the curriculum and degree obtained.

You assert that portions of Exhibit D are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). You state that each of the employees named in the present request made an election for confidentiality under section 552.024 prior to the district's receipt of this request. Therefore, the district must withhold the information you have marked in Exhibit D under section 552.117(a)(1). The district must also withhold the additional information we have marked in Exhibits D and E under section 552.117(a)(1). The remaining information in Exhibits D and E must be released.

In summary, the district must withhold the information we have marked in Exhibit E under section 552.101 in conjunction with section 21.355 of the Education Code. The district must withhold the college transcripts in Exhibit C, except for information in these transcripts pertaining to the curriculum and degree obtained, under section 552.102(b). The district

must withhold the information you have marked in Exhibit D, as well as the information we have marked in Exhibits D and E, under section 552.117(a)(1). The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy D. Peterson".

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 207039

Enc. Submitted documents

c: Ms. Lula Everett
18880 Marsh Lane #305
Dallas, Texas 75287
(w/o enclosures)